



U.S. Department of Justice

United States Attorney
Southern District of New York

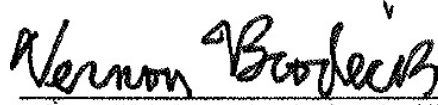
86 Chambers Street
New York, New York 10007

March 30, 2015

By ECF

Honorable Vernon S. Broderick
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

SO ORDERED:


HON. VERNON S. BRODERICK^{4/1/2015}
UNITED STATES DISTRICT JUDGE

Re: *The New York Times Co. v. U.S. Department of Justice*, 14 Civ. 3948 (VSB)

Dear Judge Broderick:

This Office represents the United States Department of Justice (“DOJ”), the defendant in the above-referenced matter brought by the New York Times Company and New York Times reporter Charlie Savage (“Plaintiffs”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). We submit this letter on behalf of both parties to update the Court on the status of DOJ’s processing of the first set of documents at issue in this case, in accordance with the schedule set forth in the parties’ joint letter of October 9, 2014, and to respectfully request that the Court sign the attached proposed Stipulation and Order Regarding Additional Processing and Briefing (the “Proposed Stipulation”), which sets forth a processing schedule for the remaining documents at issue in this case.

DOJ has completed its processing of documents responsive to categories 1, 2, 3, 4, 5, 6, 8, and 11 of the FOIA Request, and released all non-exempt material in these documents to Plaintiffs. The parties have met and conferred regarding the redacted material, and determined that motion practice will not be necessary with respect to these eight categories of documents. Accordingly, the parties will not be filing cross motions for partial summary judgment regarding these documents beginning on May 1, 2015, as entered on the docket sheet for this case on October 31, 2014.

The parties now jointly submit the attached, signed Proposed Stipulation regarding the remaining documents at issue, including categories 7, 9, 10, 12, 13, and 14 of Plaintiffs’ FOIA Request. In accordance with the Proposed Stipulation, DOJ will process the remaining documents in three tranches, with interim completion deadlines on May 29, 2015, July 20, 2015, and September 14, 2015. DOJ’s agreement to complete processing of responsive documents, and release non-exempt information from such documents, is not intended as a confirmation or denial at this time that any documents or categories of documents described in the FOIA Request actually exist.

As set forth in the Proposed Stipulation, the parties respectfully request that they be permitted to submit motions for partial summary judgment, if necessary, as to the remaining documents, or categories of documents, on the following schedule:

- DOJ's motion for partial summary judgment: November 9, 2015
- Plaintiffs' opposition and cross-motion for partial summary judgment: December 14, 2015
- DOJ's reply/opposition brief: January 19, 2016
- Plaintiffs' reply brief: February 9, 2016

We thank the Court for its consideration of this matter.

Respectfully submitted,

PREET BHARARA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
THE NEW YORK TIMES COMPANY and
CHARLIE SAVAGE,

Plaintiffs,

-against-

U.S. DEPARTMENT OF JUSTICE,

Defendant.
----- x

14 Civ. 3948 (VSB)

**STIPULATION AND ORDER
REGARDING ADDITIONAL
PROCESSING AND BRIEFING**

The New York Times Company and Charlie Savage (“Plaintiffs”) and the United States Department of Justice (“Defendant” or the “Government”) hereby stipulate to the following schedule for processing the records set forth below, including those records responsive to categories 7, 9, 10, 12, 13, and 14 of Plaintiffs’ Freedom of Information Act (“FOIA”) request, dated March 12, 2014 (the “Request”), as narrowed by the parties’ joint submission of October 9, 2014, *see* Dkt. No. 11, which is the subject of the above-captioned litigation:

1. On or before May 29, 2015, Defendant will process and produce to Plaintiffs, or notify Plaintiffs of the complete or partial withholding pursuant to any applicable FOIA exemptions of, any memoranda of law filed in support of the Government’s applications that resulted in the May 31, 2007, and August 2, 2007, orders of the Foreign Intelligence Surveillance Court (the “FISC”), which were released in part by Defendant on January 26, 2015, as part of this litigation.

2. On or before May 29, 2015, Defendant will process and produce to Plaintiffs, or notify Plaintiffs of the complete or partial withholding pursuant to any applicable FOIA exemptions of, the May 19, 2004, order of the FISC pertaining to raw take sharing, and any

memoranda of law filed in support of the Government's application that resulted in the May 19, 2004, order.

3. On or before May 29, 2015, Defendant will process and produce to Plaintiffs documents responsive to categories 12 and 13 of the Request, if any, as those categories are defined by the parties in Exhibit A to Dkt. No. 11, or notify Plaintiffs of the complete or partial withholding of such documents, if any, pursuant to any applicable FOIA exemptions.

4. On or before July 20, 2015, Defendant will process and produce to Plaintiffs documents responsive to categories 7 and 9 of the Request, as those categories are defined by the parties in Exhibit A to Dkt. No. 11, or notify Plaintiffs of the complete or partial withholding of such documents, pursuant to any applicable FOIA exemptions. To the extent any documents responsive to categories 7 and 9 were previously declassified and released by the Government, Defendant will reprocess those documents and release any additional information that was previously withheld but has been subsequently declassified.

5. On or before July 20, 2015, Defendant will process and produce to Plaintiffs documents responsive to category 14 of the Request, if any, as that category is defined by the parties in Exhibit A to Dkt. No. 11, or notify Plaintiffs of the complete or partial withholding of such documents, if any, pursuant to any applicable FOIA exemptions.

6. On or before September 14, 2015, Defendant will process and produce to Plaintiffs the following documents responsive to category 10 of the Request, as that category is defined by the parties in Exhibit A to Dkt. No. 11, or notify Plaintiffs of the complete or partial withholding of such documents, if any, pursuant to any applicable FOIA exemptions:

- a. A programmatic certification package, submitted to the FISC pursuant to the FISA Amendments Act (“FAA”), operative as of the date of this Stipulation and Order (“the Currently Operative Certification”).
- b. The Currently Operative Certification will include, if applicable: (i) the certification itself, and any additional documents, such as declarations, submitted to the FISC in support of the certification; (ii) any substantive legal filing submitted by the Department of Justice to the FISC together with the Currently Operative Certification; (iii) any additional substantive legal analysis provided to the FISC in writing specifically in connection with the Currently Operative Certification.
- c. Defendant will process all documents that are part of the Currently Operative Certification, including those that were generated after March 12, 2014, the date of the Request. Any production of documents associated with the Currently Operative Certification that were generated after the Request was submitted, however, shall not be construed as an expansion by Defendant of the relevant time period applicable to any category of the Request other than category 10. The parties agree that the relevant time period applicable to all other categories of the Request ends no later than March 12, 2014.

7. Plaintiffs’ agreement to the terms and conditions set forth in Paragraph 5 of this Stipulation and Order is without prejudice to Plaintiffs’ ability to seek additional documents responsive to category 10 of the Request following the Court’s decision on any summary

judgment motions that address Defendant's withholding of documents, in whole or in part, that are responsive to category 10 of the Request.

8. Defendant shall make any assertions regarding the total number of documents responsive to category 10 of the Request, including whether that number is a classified fact, on or before September 14, 2015. If Defendant asserts that the total number of documents responsive to category 10 of the Request is a classified fact, this assertion shall be addressed by the parties as part of the summary judgment briefing contemplated by Paragraph 10 of this Stipulation and Order.

9. DOJ's agreement to complete the processing of documents responsive to the Request, and release non-exempt information from such documents, as described in this Stipulation and Order, is not intended as a confirmation or denial that any such documents, or any categories of documents described in the Request, actually exist.

10. Within 21 days of the completion of the processing, production, and/or notifications set forth in this Stipulation and Order, the parties will meet and confer regarding the documents withheld in whole or in part by Defendant, and Plaintiffs will notify Defendant whether they wish to challenge any of the Government's withholdings.

11. If the parties are unable to resolve any issues pertaining to the processing, production, and/or notifications set forth in this Stipulation and Order, the parties will file motions for summary judgment regarding the propriety of Defendant's decisions to withhold certain information pursuant to various FOIA exemptions, according to the following schedule:

- a. Defendant's motion for partial summary judgment: November 9, 2015;

- b. Plaintiffs' opposition and cross-motion for partial summary judgment: December 14, 2015;
- c. Defendant's reply/opposition brief: January 19, 2016;
- d. Plaintiffs' reply brief: February 9, 2016.

12. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York
March 30, 2015

Dated: New York, New York
March 30, 2015

THE NEW YORK TIMES COMPANY
Attorneys for Plaintiffs

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SO ORDERED:

VERNON S. BRODERICK
UNITED STATES DISTRICT JUDGE